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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,570	04/26/2000	Todd A. Kuiken	P1308USA	9521

8968 7590 08/13/2003

PATENT DOCKET DEPARTMENT
GARDNER CARTON & DOUGLAS LLC
191 N. WACKER DRIVE, SUITE 3700
CHICAGO, IL 60606

EXAMINER

SNOW, BRUCE EDWARD

ART UNIT PAPER NUMBER

3738

DATE MAILED: 08/13/2003

22

Please find below and/or attached an Office communication concerning this application or proceeding.

Interview Summary

Application No.

09/558,570

Applicant(s)

KUIKEN, TODD A.

Examiner

Bruce E Snow

Art Unit

3738

All participants (applicant, applicant's representative, PTO personnel):

(1) Bruce E Snow.

(3) _____.

(2) David Frey.

(4) _____.

Date of Interview: 11 August 2003.

Type: a) ☒ Telephonic b) ☐ Video Conference

c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☒ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: _____.

Claim(s) discussed: 1.

Identification of prior art discussed: Wilkinson, Phillips, Merlette.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Discussed applicant's proposed claim 1; see attached. The Examiner suggested describing the connector rotates relative to to the horizontal leg instead of rotating about an axis of said leg.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.



BRUCE SNOW
PRIMARY EXAMINER

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

GARDNER CARTON & DOUGLAS LLC

191 N. Wacker Drive
Suite 3700
Chicago, Illinois 60606-1698
Voice: 312-569-1693
Fax: 312-569-3000

DATE: Tuesday, July 29, 2003

RECIPIENT

FAX: (703) 746-3362TO: Examiner Bruce Snow

RECIPIENT

COMPANY: _____

PHONE: _____

FROM: Teague, RolandaSENDER PHONE: 312-569-1693TOTAL NUMBER OF PAGES INCLUDING COVER SHEET 07

MESSAGE: Examiner Snow:

Attached is the Proposed Claim Amendment. Please call me next week at your earliest convenience to discuss.

Thanks,

David Frey

If there is any problem with this transmission, please call the sender at the number indicated above as soon as possible.

••• CONFIDENTIALITY NOTE •••

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PATENT
Attorney Docket No. P1308US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/558,570
Applicant : Todd A. Kuiken
Filed : April 26, 2000
Title : High Profile Multiaxial Prosthetic Foot

TC/A.U. : 3738
Examiner : Bruce Snow

Docket No. : P1308US

DRAFT

Commissioner for Patents
Box AF
U.S. Patent and Trademark Office
Washington, D.C. 20231

AMENDMENT

Sir:

This is in response to the Final Office Action dated June 10, 2003. Please amend as follows:

Amendments to the Claims are reflected in the Listing of Claims which begins on page 2 of this paper.

Remarks/Arguments begin on page 3 of this paper.

In re Appln. of Todd A Kuiken
Application No. 09/558,570
Reply to Final Office Action of June 10, 2003

LISTING OF CLAIMS

This listing of claims will replace all prior versions, and listings, of claims in the application:

Claim 1 (currently amended): A prosthetic foot comprising:
an L-shaped frame having a unitary first axis and a second axis, the first axis forming a substantially horizontal leg of the L-shaped frame;
a connector connected to the frame, the connector being adapted to ~~rotate~~ pivot about the unitary first axis; and
a footplate attached to the connector, the footplate defining a first end and a top plane such that the footplate is also adapted to ~~rotate~~ pivot about the unitary first axis and flex with respect to the second axis.

Claim 2 (original): The prosthetic foot of Claim 1 wherein the frame is a tubular L-shaped member.

Claim 3 (original): The prosthetic foot of Claim 1 wherein the frame is manufactured from a material, the material selected from the group consisting of high strength polymer and composite material.

Claims 4-22 (withdrawn)

In re Appln. of Todd A Kuiken
Application No. 09/558,570
Reply to Final Office Action of June 10, 2003

REMARKS/ARGUMENTS

The following remarks are responsive to the June 10, 2003 Office Action.

In the Office Action, the Examiner rejected claims 1-2 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,053,946 (Wilkinson). Claims 1 and 3 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,206,934 (Phillips). Claims 1 and 3 were also rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 5,156,631 (Merlette). Finally, claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilkinson.

Claim 1, as amended, is directed to a prosthetic foot that includes a footplate attached to a connector such that the footplate is adapted to pivot about a unitary axis and flex with respect to a second axis. This multiaxial movement of the footplate is disclosed in several places in the specification including, for example, page 7, lines 6-21. As such, no new matter is added. Furthermore, Figures 12 and 13 exemplify a degree of pivot of the footplate. The pivotal movement of the footplate about a unitary axis is not, however, anticipated or rendered obvious by any of the cited prior art.

Wilkinson discloses a prosthetic foot that is adapted to flex about a first axis of the foot as is depicted in Figure 4 of the patent. This degree of flexing allows for motion in the anterior-posterior direction. As discussed in a previous amendment, because Wilkinson teaches that "[a]n appropriate fastener 94, such as a rivet, may be used to *secure* the plate 90 to the foot portion 80, Wilkinson does not disclose or suggest that its foot portion could rotate or move in a medial-lateral direction about a second axis. In particular, Wilkinson does not disclose a prosthetic foot that pivots about a unitary axis.

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The Examiner states that the connector 94 in Wilkinson "is adapted to rotate about the [longitudinal] axis of portion 76." The Applicant respectfully disagrees with this assertion. Because item 76 is defined as the upper portion of the prosthetic foot apparatus 70, the Applicant understands the longitudinal axis to extend vertically through the upper portion 76 substantially vertical to the plate 90. Nothing in the Wilkinson specification suggest that the connector 94 is adapted to rotate about such an axis. In fact, the fastener 94 connects the plate 90 to the foot portion 80 of the Wilkinson device. This type of connection does not disclose or suggest that the foot portion could rotate or move in a medial-lateral direction about an axis running parallel to the plate 90. Again, the Applicant asserts that Wilkinson actually teaches away from a pivoting or rolling motion of the connector and plate in a medial-lateral direction as such rotation would cause the rivet or bolt to snap as the footplate rotated about the horizontal leg of the tubular member.

Because Wilkinson does not disclose a prosthetic foot that has a footplate adapted to pivot about a unitary first axis and flex with respect to a second axis, the Applicant requests that the Examiner withdraw the rejection of claims 1 and 2 under 35 U.S.C. § 102(e) with respect to the Wilkinson patent.

As with the Wilkinson patent, Phillips also teaches against the rotation of the footplate about a unitary axis. Phillips does teach a prosthetic foot that rotates about an axis transverse to that of the footplate through the use of an ankle block 16 "sandwiched between the foot plate 12 and the ankle plate 14." This ankle block "is preferably glued or bonded to both plates using polyurethane adhesive or other known securement technologies." Phillips, Col. 3, lines 5-9. This rotational movement about the spring between the ankle plate and the footplate is further

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illustrated in Figures 5a-5d of the patent. This movement, which is referred to as "rollover" in the patent (col. 10, ll. 11-15) allows the footplate to flex in the anterior-posterior direction. Phillips does not, however, teach about pivoting of the footplate about a unitary axis in the medial-lateral direction. In fact, Phillips teaches away from such rotation as the foam used for the ankle block does not have a unique axis of rotation. Furthermore, the foot portion disclosed in Phillips does not pivot about the vertical axis as the foot portion is pinned using two bolts 48 to the vertical attachment member 34 (see, Figure 2). Therefore, Phillips does not disclose a prosthetic foot having a footplate attached to a connector such that the footplate is adapted to pivot about a unitary axis. For this reason, the Applicant requests that the Examiner withdraw the rejection of claims 1 and 3 under 35 U.S.C. § 102(e) with respect to Phillips.

Concerning the rejection of claims 1 and 3 under 35 U.S.C. § 102(b) as being anticipated by Merlette, the Applicant asserts that claim 1, as amended, is not anticipated in that Merlette does not disclose a foot that pivots about a unitary axis. As with the other prior art cited by the Examiner, Merlette discloses a prosthetic foot that flexes about a first axis but does not pivot about a unitary axis. Instead, the Merlette foot utilizes resilient material 21 extending "from the toe tips back to the area where the anterior toe section 13 of main member 10 and plantar toe section 16 of sole member 15 diverge." Merlette, col. 4, ll. 60-63. This type of resilient material does not allow the foot to pivot about a unitary axis and therefore, the Merlette foot does not anticipate claims 1 and 3. For this reason, the Applicant requests that the Examiner withdraw the rejection of claims 1 and 3 under 35 U.S.C. § 102(b) with respect to Merlette and allow the claims to issue.

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With regard to claim 3 under 35 U.S.C. § 103(a) with respect to Wilkinson, for the reasons discussed above, Wilkinson does not render obvious the prosthetic foot claimed in the instant application. As such, the Applicant requests that the Examiner withdraw this rejection of claim 3 and allow all of the claims pending in the application to issue.

This application is believed to be in condition for allowance and early favorable action is requested. The Examiner is requested to call the undersigned attorney if that would be helpful in resolving any matters that might remain.

Respectfully submitted,

Date: _____

David A. Frey, Reg. No. 43,618
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